

Challenged Pragmatism

Conflicts of Law and Religion in the Danish Labour market

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Abstract

Against the backdrop of a well-regulated and pragmatic Danish labour market, the question of reasonable accommodation is discussed on the basis of current legislation, recent legal cases and substantial interview material drawn from the RELIGARE sociolegal research done in Denmark. Employees of religious faith have made religious claims and thereby challenged a secular understanding of the Danish labour market. This raises the question of the extent to which the religion of the individual can be accepted in the general public sphere. At the same time, religious ethos organisations have argued for the protection of their organisational identity and sought to employ and dismiss personnel according to the norms of the religious ethos, raising the question of how far 'reasonable accommodation' extends. Both the individual and the collective cluster cases ultimately raise questions concerning where to draw the line between accommodating religion and restricting freedom on the basis of professionalism, job functions or other reasons. On the basis of empirical findings, this article concludes that the pragmatic approach is supporting a renewed religious identity of faith-based organisations, but also warns against hijacking rights of individual employees.

Keywords

Danish labourmarket, discrimination, public sphere, reasonable accommodation, RELIGARE, religion and secularism

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Introduction

Regulation of the Danish labour market: Pragmatic and secular

The Danish labour market is both in principle and in practice regulated by market organisations through negotiations (Greve, 2013; Madsen, 2006). Legislation is limited to rather few norms applicable to everyone in the labour market (Kristiansen, 2008b). The number of legal cases aimed at solving labour market conflicts has also been limited in practice – not because there were no conflicts, but because conflicts were solved through non-legal means (Petersen, 1996). Most often regulation in the labour market is thus less based on a principled approach and more based on a need to solve concrete conflicts in real life (Dalberg-Larsen, 2001b).

Such a pragmatic approach to the general regulation of a central field of modern life can also be seen elsewhere in Danish and Nordic law (Dalberg-Larsen, 2001a, 2002, 2012), implying a certain hesitation towards being too principled. International human rights are quite often understood more as legal policy than as legal norms (Vedsted-Hansen, 2002), and problematised also because the implementation of such general legal standards may change the balances between legislative powers on one side and court-rooms or interpretative bodies on the other (Bruun Nielsen, 2006), thus between professional jurists and democratically elected politicians (Hammerslev, 2010). On the labour market, this approach has historically kept regulation in the hands of labour organisations such as unions and employer associations.

Throughout the 20th century, these organisations have increasingly understood the labour market as secularised (Christoffersen, 2012c). Solidarity and equality in the *Danish model* are often seen as reminiscences of common, religiously informed mentalities (Gundelach et al., 2008; Kaspersen, 2006), albeit in a very secularised form, not to be recognised as directly Lutheran any more (Østergaard, 2005; Petersen et al., 2010). Consequently, religious norms have reduced impact on the regulation of the labour market. This can be seen, for instance, in the organisation of the weekly and yearly work calendar. Working on Saturdays and Sundays as well as on official holidays, however, still warrants greater compensation according to most labour market agreements – this is precisely where neither the labour market nor the society as such is secular (Christoffersen, 2012a).

A general secularity of the labour market thus remains the case, even though the last 20 years have seen the Christian labour organisation grow considerably (*Ugebrevet Mandag Morgen*, 2010). The home page¹ of the Christian labour organisation does not explain why it is called Christian or how its religious identity makes a difference in concrete conflicts, proposed solutions or the general norms of the Danish labour market; on the contrary, this so-called ‘yellow’ labour organisation markets itself as simply a cheaper offer for those who want to associate themselves. Denmark does not have a *pillar* system and the old labour market organisations in general perceive religious questions as private matters – as a rule, religious matters were not dealt with as part of the employment relationship.

This general secularity of the labour market could also be regarded as having its normative basis in the Danish constitution. Religious discrimination has been prohibited since 1849, including in the public labour market (Olsen, 2006). An important element in the transition from state religion to freedom of religion is that religion should no longer have any influence on the individual’s access to civil and political rights and, equally, that religious

arguments are not valid for exemption from general civic duties, as confirmed in Article 70 of the Danish constitution (Christoffersen, 2012a). Over the years, this constitutional norm has come to be understood as a general prohibition against taking into account the religion of an individual applying for a public position such as judge, teacher, doctor and so on. In addition, the requirement of *folkekirke* (Church) membership for becoming a civil servant has also, consequently, been taken out of legislation; likewise for job functions within the *folkekirke* – except for the function as priest in the church (Brunés, 2001: 104).

Implementation of International Labour Organization (ILO) treaties starting in the 1970s and later European Union (EU) directives, however, has led to an increasing legislative regulation of labour market norms (Kristiansen, 1998) – by some regarded as a threat towards the Danish ‘flexicurity model’ (Kristiansen, 2008a), by others as a contribution to modernisation of the Danish system (Nielsen, 2007). On the one hand, a more formalised approach to the hiring and firing process must be seen as a necessary protection of the employers; on the other hand, this could mean that employers become more hesitant in employing personnel, with the result that the labour market ‘stiffens’. Much literature, however, supports the necessity of protecting vulnerable groups in the labour market, seeing the implementation of ILO and EU norms as an advantage for women’s rights (Ketscher, 2002: 313–314; Hellum and Ketscher, 2008), immigrants and disabled individuals (Justesen, 2003, 2008), and regards Nordic pragmatism as double discrimination since it could be seen as making it even more difficult for, for instance, immigrant women to gain even basic rights in the Nordic labour market (Jørgensen, 2007). Thus, a change of the Nordic approach might be seen as an improvement (Nielsen, 2002). The traditional approach in the Danish labour market, however, seems to be to adjust to the European market approach by working ‘beyond the influence of statutory legislation or collective agreements’, as Ketscher puts it (2001: 231).

This continuous interaction between principled and pragmatic approaches can be seen also in legislative labour law practice. The first ILO treaties were implemented into Danish labour market regulations in the early 1970s. The first implementation of the principle of *equal pay for equal work* was – symptomatically – done through a general agreement between the social partners on the basis of a suggestion from the official mediator of negotiations in 1973. As the EU adopted directives on the same issue as well as on *equality between men and women* in the labour market, both directives were implemented by statutory law. Danish legislation thus includes a wide range of applicable laws prohibiting direct and indirect discrimination related to different factors, such as gender, race, age and religion in the workplace, including implementation of EU directives 2000/43 and 2000/78.² All Danish anti-discrimination legislation has been renewed over the last 10 years, in relation to the implementation of these two directives (see further, Nielsen et al., 2010).

The law on prohibition of discrimination³ thus in Section 1 prohibits direct and indirect discrimination on the basis of (among others) religion; according to Section 4 it is prohibited to seek information about an applicant’s or employer’s religious affiliation; Section 5 prohibits advertising for a person of, for example, a distinct faith or religion unless the situation is covered by the exemptions in the law. In Section 6, these exemptions are formulated: Section 6 (1) generally states that the prohibition to discriminate on the basis of political view point, religion or faith does not apply to employees whose organisation or firm has as its direct purpose to support a certain political or religious standpoint and where

the employer's political or religious persuasion must be regarded as relevant for the organisation; Section 6 (2) allows for dispensation from the law if, for example, the belonging to a certain religion or faith is of significant importance and proportional in regard to certain types of employment.

In January 2009, the Board of Equal Treatment started functioning as an administrative, independent and autonomous quasi-judicial body. The sole purpose of the Board is to issue decisions in cases of individual complaints of discrimination. The decisions made by the Board are final and binding for both parties. The Board may decide that a victim of discrimination is entitled to compensation. The Board can also set aside a dismissal, unless it is considered unreasonable to claim the employment relationship can be maintained or restored.⁴

In 2003, the Institute for Human Rights was appointed as the National Equality Body (specialised body) according to the Race Directive. In 2011, the Institute was given the task to promote, protect and monitor the implementation of the United Nations (UN) Convention on the Rights of Persons with Disabilities in Denmark following Article 33 of the convention. In 2001, the Institute was appointed as the National Equality Body (specialised body) on gender issues, according to the EU directives on gender discrimination.⁵

Danish legislation, and especially soft law and policy documents concerning equality, also includes rules on mainstreaming (Justesen, 2005; Slot, 2011). Such rules are, however, not formulated clearly in regard to religion, and it remains to be seen how a mainstreaming strategy on religion could possibly be formulated.

Religion can thus be both a (prohibited) ground for discriminatory practice within the secular labour market and an argument from religious communities and ethos-based organisations for exemption from the general rules on their labour market.

When ILO norms on equality between men and women were implemented in Danish law in 1978, the parliament took an effort in establishing a possibility of giving dispensations related to requirements in specific job functions. The idea was that a general exemption should be established for functions in religious communities with specific gender requirements (Catholic priests, Jewish rabbis). Even though equal access to the function as priest in the *folkekirke* had been established in 1948, the government, however, widened the general dispensation to also cover congregations in the *folkekirke*, which based on theological grounds wanted a male minister (Christoffersen, 2012c: 99–100).⁶ This legislation has been debated ever since. These rules allow, in combination, for not only preferring members of the same religion when hiring within a religious community or a religiously-based organisation, but also for preferring one gender over the other on religious grounds. The main problem is how to balance a triangle of concerns: protection of individuals against religious discrimination on the religious labour market; protection of individuals against religiously motivated discrimination of sex, gender and disability in the religious labour market; and protection of religious communities and ethos organisations.

This discussion has been reopened twice in relation to legislation. In 1996, discrimination on the basis of (among others) faith was generally prohibited in the labour market, again with exemptions for religious communities or organisations with a religious ethos (the concrete articles are mentioned earlier).⁷ And in 2001, a commission was appointed to propose the best way of implementing the two EU anti-discrimination directives and, especially, directive 2000/78/EC. A main question was whether the

general prohibition of discrimination on the basis of faith in society, as such, should be widened to also cover religion or belief, and how to implement the prohibition of discrimination of religion within the labour market, that is, in which ways the already existing prohibitions should be widened and how to exempt religious communities. The legislative conclusion was to keep a minor implementation of the two directives and uphold a general exception in what could be called the 'religious labour market', but without taking any stance on *multiple* discrimination on the religious labour market.⁸

A triple code thus seems to inform the normative structure that is relevant in analysing case law and experiences of religious discrimination in the Danish labour market: first, there is an old tradition for prohibiting discrimination against individual employees on the basis of their faith and religious beliefs, mostly relevant on what could be called the *secular* both public and private labour market; second, the general understanding, also backed by constitutional law, has been that religion should not be used as an argument for exemptions in the labour market, neither by individuals in the secular labour market nor by employers in the *religious* labour market – this has led to minimum implementation of the EU directives especially; and finally, a hidden structure of secularity combined with a pragmatic rather nonchalant approach seems to have led to an avoidance of concern in the field. This triple code, however, seems to have changed recently, and these changes are the main focus of this article.

Recent trends and tendencies – an empirical approach

On the basis of these general introductory remarks concerning a combined pragmatism and secularism in Danish labour market regulation, this article goes on to discuss recent changing trends and tendencies in a broader reception of the existing normative regulations in the Danish society.

Our discussion is informed by two sets of data. First, each part of the subsequent discussion will present significant case law involving conflicts on religion in the labour market. Second, results from a series of qualitative interviews are presented in order to show the broader climate of change. Cases presented are from supreme or high courts as well as from the recently established Board of Equal Treatment, which surprisingly has had to deal with this area in more cases than some would have expected, given the primary lack of focus on the field. Qualitative interview data are from 18 qualitative interviews,⁹ with nine female and nine male interviewees, conducted in the context of the RELIGARE project in 2011.¹⁰ The interviewees were aged 26–79 years, and they represented minority as well as majority perspectives on religion in Danish society.

The general decision in the RELIGARE sociolegal project was that interviewees should be opinion makers or 'elites' from religious and secular strands, including public intellectuals, political, administrative and judicial elites and also persons from labour unions. The Danish interviewees were thus identified in order to give voice to different positions in Danish society with regard to religious and secular norms, both male and female from different generations, with different religious or secular backgrounds, representing as nuanced a picture of institutional functions as possible. The Danish interviewees therefore include politicians from parliament and the municipalities, leading civil servants, judges, and leading officials of labour unions as well as of organisations

in civil society such as human rights institutions and academia. All interviewees are Danish nationals (see Appendix 1 for a list with information about each interviewee). All our interviewees stressed that they voiced their own opinions and were not speaking on behalf of the organisations they are publicly linked to.

The empirical data from the combined (case-oriented and qualitative) data set are presented in the article in relation to two of the three normative codes, mentioned in the previous section as having informed the field. First is a discussion about the religious individual in the secular private or public labour market (*the individual religious cluster*, as described in the introduction of this special issue). Subsequently, the second part presents and discusses conflicts between (religious or secular) individuals and religious communities or organisations with a religious ethos as employers in what could be identified as a religious or a semi-religious labour market (*the collective religious cluster*). By way of conclusion, we finally discuss the presented results in the light of the third normative code, that of a combined secularism and pragmatism.

Conflicts concerning the individual in the secular labour market

This type of conflict concerns religious individuals, some of whom wish to bring their individual religiosity with them when working in what could be perceived as a secular labour market, and others wishing not to be singled out as religious in the same secular labour market. Common for the two groups is that they find themselves limited by their employers in manners they find unfair.

Court and board cases The legal cases in the field concern different types of claims related to the individual's religious identity.

The Board of Equal Treatment found direct discrimination (*J.nr. 7100072/12*) in a case where a man who applied for a job as an electrician in a private firm was asked whether he was a Muslim. It was proved during the case that the question was raised because the private firm wanted to have an inclusive policy, for instance, regarding food in the canteen. Even though that was the purpose, the board found the question illegal and issued a very small compensation of €300.

A case from the *Western High Court (U.2001.207.V)* concerned a newly hired leader of a local music school run by the municipality. He was not asked about his religion in the hiring process, and he did not mention during that process that he would require accommodation of his job functions on the basis of his religious identity. As part of the local music community (and also as part of a traditional relation between the Danish 'popular school' and the 'popular church'),¹¹ the school by tradition held Christmas concerts together with the local church, which had a famous boys' choir. In the lead-up to the first Christmas following his employment, however, the music school leader revealed that he could not run this collaboration, since due to his faith as a Jehovah's Witness he could not contribute to any sort of celebration of Christmas. He was subsequently fired as leader of the music school. This dismissal was found unlawful by the court (direct discrimination) since a person's religious faith could not lawfully be used as an argument for dismissal from a public function as school leader, and the complainant was compensated with Dkr75,000 (around €10,000, which is equivalent to three months' salary).

Both cases seem to underline the secularity of the labour market – when it comes to an individual's religious beliefs, an individual who wants to hide his or her individual faith is supported in doing so in the hiring process, even though the faith could have an impact on the social and collaborative relations later on. The argument in the first case seems to be that the employer had taken too many initiatives concerning accommodation, and the argument in the second case is that a solution had to be found to accommodate a leader who had not revealed anything about his need for accommodation. The cases are not easily understood; they somehow show a sort of unease concerning how to accommodate religious minorities in the best way without changing good accommodation practices in regard to the majority religion.

A case from the *Eastern High Court* (U.2008.1028Ø) could be seen as parallel to the earlier Western High Court case. Here the applicant was not hired for work in a public residential home for children due to her refusal to eat during Ramadan. The institution had recently formulated its pedagogical principles, including norms for common meals, in order to teach the children from broken homes and weak backgrounds common norms of behaviour. The institution therefore argued that it was a necessary part of caring for the children to have lunch together, and they therefore found it unacceptable that one of the employees could not eat in certain periods. The court found indirect discrimination and gave a compensation amounting to Dkr25.000.

This line of argumentation was also followed by the Board of Equal Treatment, who found indirect discrimination in a case on food and religion (*J.nr. 7100066/2012*). A public school for vocational training of dieticians forced a female Muslim student to taste food made with pork. The Board saw this as indirect discrimination, since the school did not prove that tasting all sorts of food irrespective of religious principles by the students was necessary for the vocational training. The school was obliged to pay a compensation of Dkr75.000. The case is now brought to court.

The same requirements are not upheld, however, when it comes to private firms in the market. In another case also concerning Jehovah's Witnesses (*Eastern High Court, case no. OE2008.B-821-07*), the plaintiff, a Jehovah's Witness, was asked to take part in a birthday reception for one of the partners in the firm. The reception was used for marketing of the firm, and it was expected that all employers attended, accommodating the business partners. Claiming it was against her religion, she left the birthday reception and later brought the case to court. The court, however, found in favour of the defendant and the dismissal of the Jehovah's Witness was upheld. Part of the reasoning was a general reluctance towards the broadness of the religious claim. The central argument, however, was secular: such an approach requires too much religious accommodation.

Normally one would think that a social occasion in the workplace could not be used as an argument for firing an employee because of religious restraints. But the case adds to the general picture: religion has traditionally not been seen as a relevant argument in Danish workplaces. The society is about to adjust to high-profile problems seen from the point of view of religious persons; however, risking not only the social coherence at the workplace, but also an occasion of marketing of the firm in a way that undermined the authority of the partners of the firm, might have been seen as too hard-nosed a conflict with mutual pragmatism.

The two most famous Danish cases of individual religious belief and the labour market are also related to the private labour market: the Magasin case and the Føtex case. In the Magasin

case (*U.2000.2350; Eastern High Court*), a trainee was turned away from a department store, Magasin, for turning up to her one week of work wearing a headscarf. She argued that she wore it on religious grounds. The store claimed that the headscarf did not comply with their rules governing employee clothing. The High Court ruled that Magasin had no legal foundation for its dismissal of the girl and the decision thus constituted indirect discrimination. Magasin lost the case because it had no pre-existing dress policy, only a general understanding, it was argued, and maybe also because she was a schoolgirl who was to be working in the store only for one week. 'What is really the problem' was the pragmatic response in Eastern High Court to the more principled approach in the department store Magasin.

The employers, however, learned from the Magasin case; and in the next landmark case (*U.2005.1265; Supreme Court's Føtex decision*), the employer won and was supported in its right to dismiss a woman who wanted to wear a headscarf while working as an assistant in the cashier line in a store. The woman had chosen to wear a headscarf and was lawfully dismissed from work after violating the company dress code, which clearly stated that no religious, political or other symbols could be worn at work. This case is the only Supreme Court decision in the field and stands out as an example of a principal decision in court; it has also been supported as such from secularist sides in academic analysis (Ketscher, 2005; Olsen, 2005).

The Board of Equal Treatment has followed the line from the Magasin and Føtex cases. In *J.nr. 7100083-12*, a female applicant to a clothing store wore a Muslim headscarf. She was asked whether she wanted to wear the veil in the shop and as she confirmed, the assistant store manager in charge was insecure about the content of the dress policy of the store. There was, however, a policy prohibiting the wearing of religious or political symbols and only accepting non-religious headgear delivered from the store. On the basis of this policy, the claimant lost her case.

Voices about religious clothing in the private labour market These cases have stopped the discussion concerning the rights for individuals to wear religious identity markers at work in private firms for some years now (Roseberry, 2011), since Danish interpretation of the law is now clear: employers in the private labour market have a general right to demand a common policy regarding dress, and employees have no right to demand or require exceptions from this policy based on religious (or political) persuasion.

It is noteworthy that the acceptance of certain ritualised religious practices (not contributing to a Christmas service by leading the choir, not eating during Ramadan) is not widened to an acceptance of religious claims to dress in the (private) workplace and here restrictions are accepted. Thus, a traditional narrow concept of 'religion' seems also to play into the decisions.

However, the practical reality is that also Dansk Supermarked (the store behind the Føtex case) now accepts headscarves in their stores and also at the cashier lines.¹² In the end, while the courts accept restrictions on religious dress, employers may for a variety of reasons decide not to make use of this right and instead open for some accommodation. This changed approach by private employers is also supported in our interviews, where we also find voices warning against being too strict or principled. Thus, a young leader of the pious Christian movement within the *folkekirke*, HOB, warns against general discrimination towards religion in public, and he understands a mall as part of the

general public space. He warns against a general public space with no distinctions, where secularity and conformity are the only visible normative presence. He wishes Jewish, Muslim and Christian symbols to be equally visible.

I believe that if you want to put religion aside, like it doesn't exist, [...] then it will only make room for those who make no distinction and I believe that is wrong [...] I think there should be room for the cashier in Irma supermarket to wear a headscarf or wherever, it's alright by me. But then respect should go both ways, from Muslim women, that the cashier at nr. 2 is wearing a cross, that that is also legitimate. (HOB)

The tentative conclusion may thus be that traditional pragmatism has gained new influence over (secularist) principles in the private part of the Danish labour market and that now, after some turns in the legal debates, it seems to open to a more inclusive approach towards personal religious symbols (Christoffersen, 2012b).

Religious dress in the secular public labour market It is a general European understanding that public institutions, apart from being workplaces, also somehow represent 'statehood' (Ferrari and Pastorelli, 2012). It is, however, also rightly underlined that not all publicly driven institutions, at least not in all European countries, are necessarily representatives of any sort of 'state values' (Foblets, 2012). In a Danish context, the values represented and dealt with in court rooms as compared to primary schools, for instance, are quite different when it comes to requirements concerning how the employee makes herself visible, even though both spaces are in principle seen as secular.

Such a distinction between different types of public spheres or institutions was also made by our interviewees. They agree that in principle it is important to distinguish one public sphere where everyone meets at random or freely, such as a park or street, from another public sphere where we must all be able to coexist, such as a school or hospital. In the one public sphere, everyone is welcome on their own terms, whereas there are limits as to the other. When reflecting on nurses and other medical professionals wearing religious headwear, our first interviewee argues that taking your religious business to the common public institutions should not be allowed. DN, a young scholar who was the most openly secular of our interviewees, said:

With regard to the public space, and by that I mean a public hospital where there are no private institutions taking part in the daily operations. It has to be like that, that everybody is equal; you should not be met with religious symbols maybe other than a pin, used for historical reasons. People like me are not allergic to religious symbols, but symbolism is symbolism and that's where you start to affect people's attitudes in a religious direction within the public institutions. (DN)

Another interviewee from whom we expected to hear a strong secular voice is JC, the director of the Danish Institute for Human Rights, who is also a legal scholar. He turns out to have a very pragmatic view, thinking that there are worse human rights problems in the world than whether or not secular people in Denmark meet a religious person on the street or in public premises. He thus gives a word of warning against taking the

distinction between the public spheres too far, because the line is impossible to draw. There is a right for everyone to have a religion, but not to dictate to others what they can or cannot do. Weighing individual rights against public concern is, as always, the crux of the matter:

You can take the judges and you can take the uniformed personnel such as the military or the police and then you can also take the nurses and say that since they're wearing uniforms, they have to be standardised as well. Then you can take the librarians since you should be able to walk into a library and receive religiously neutral counselling and then you remove it from there. Then you can take the educators since you don't want them raised like that and so on and so on. There would be no end to it, and it'll be the individual citizens lording it over the others since they'd want it their own way. [...] If it becomes so that every citizen can decide that 'I don't want to see this if it offends me,' then you're really exerting excessive power over others in society. It'll end up being a violent power, since I will then decide what others can and cannot do. That's the other extreme that I can see. We can become so sensitive that we can't tolerate other people, if they aren't exactly like me. (JC)

Thus, in our interviews we did find principled, secularist voices, arguing that public institutions should be totally secular. But we also found pragmatism. And precisely the pragmatic turn prevailed when problems came up a couple of years ago in relation to questions concerning religious clothing for civil servants. Even though a principled legislation took the lead concerning the judges, a more pragmatic functionalist solution is prevailing now for other civil servants such as teachers, nurses, etc. (Christoffersen, in press).

The Courts of Denmark (organising the whole court hierarchy)¹³ had suggested an accommodating approach towards judges and others to be employed in the courts and formulated a clothing policy that also allowed for the wearing of modest religious symbols, including a veil.¹⁴ This, however, caused uproar from both public intellectuals and politicians, fearing that the faith of the individual judge, which should be irrelevant, would now become visible. On the basis of this discussion, the government set up a committee to analyse relevant requirements in the public secular labour market in regard to religious symbols.¹⁵

As for the courts, a principled secularist approach was adopted: a new law prohibited the wearing of any religious, political or other symbols which could potentially distinguish the personal persuasions of the individual judge, when in the court room.¹⁶ The legislative powers in this regard thus followed the understanding that the court represents secular state powers – an understanding that was already part of the heritage behind the a forementioned Article 70 of the Danish constitution.

As for other public civil servants and other jobs in public institutions, however, a more functionalist approach was followed. The government quite unusually sent out a general note called '*Burqa and niqab do not belong to the Danish society*', aiming at interpreting existing laws and practices so that the use of these two types of religious clothing in public workplaces was limited. The paper took as its starting point that the wearing of religious clothing in principle belongs to personal freedom and to freedom of religion, so that public institutions could only limit this by law or based on arguments in line with the European Convention on Human Rights Article 9 (2). The use of religious clothing could thus be

limited if a niqab or a burqa functionally hinders the work as a nurse, as a school teacher and so on because of safety reasons or due to a need for personal contact¹⁷ (See further Christoffersen, in press and Roseberry, 2009).

This pragmatic acceptance of accommodation with regard to religious dress and symbols, provided public decency and facial visibility are upheld, is also voiced in our interviews. Our interviews, however, intertwine the two sets of arguments: the functionalist approach and the principled 'state values' approach. In these matters, we see how presumptions of both symbols and secularism are tenets of the discussion.

It was our experience in the interviews that it was often the imams who framed the problems most clearly, partly because it concerns them, but also largely because the questions related to Islam, such as religious dress, are far from being as straightforward as is often generally assumed. One of our interviewees, NB, works as an imam at the central hospital in Copenhagen, *Rigshospitalet*, and took a middle stance in the discussion:

Principally, I think that you should respect all religious symbols, even burqas. But there can be some practical limitations, practical challenges where, [...] it can be impractical in regard to your work, such as schoolteachers where mimicry and facial expression and eye contact can be important in the teaching. [...] Then that person can – in a dialogue of course – be told, 'this may be hard; so you can be given some other tasks so you could maybe use your training for something else.' (NB)

The imam here represents the pragmatic approach to the question of religious clothing. In principle, he is in favour of an acceptance of the wearing of a burqa, also as an employee in public institutions. However, when it comes to the concrete questions, he would – as many others in Danish society – argue pragmatically or functionally. It is simply not practical to wear a burqa at work as a school teacher; in that case an alternative, potentially a 'back-stage' function, is then suggested.

In relation to labour market problems, the concern regarding the burqa is related to professionalism and professional functions and how to fulfil them if the persons around you cannot see your face. It is assumed that one cannot be as professional a nurse or day care helper or teacher if one wears a burqa. It is our understanding that many non-Muslim religious groups in the general Danish public support this understanding.

However, a Muslim woman, SA, who is trained as a lawyer but does not work as one, thinks that often functional problems related to the wearing of a burqa cannot be solved, even though they may present a challenge. By way of example, she explains:

I have a friend that I met at the Frederiksberg Mall. The only way I recognised that it was my friend was because she was holding her child. It's because she was wearing a burka. But when she saw me, she said, 'It's me!' So I had no trouble talking to her, even though I couldn't see her face. But I know that other people don't feel the same way I do. I can see that. (SA)

It was a fairly general trend in the interviews that religious symbols and headwear are – to some extent – perfectly acceptable for our interviewees, whether they are secular or religious, public or private, representing organisational or political standpoints. But there is not necessarily agreement on whether it is a 'good' or a 'bad' thing. That has

to do with the signals sent in the public sphere and the signals that go against our individual ideas about public order and public peace. A good example here might be the young female mayor from the municipality of Copenhagen, who was very sceptical. She wanted to show tolerance, but did not think religion should be allowed to suppress individuals. However, when it comes to the professional employment context, she noted:

Regarding the burqa, it is my position that if it impedes professionalism then I don't think it's all right. If you can professionally and academically prove that wearing a burqa makes you a poorer educator because the children become uncomfortable . . . personally and politically, I don't like burqas but I wouldn't ban them or something. Nonetheless, I believe that burqas are somewhat oppressive to women, completely different than the other kinds of headscarves. Just as I don't care, politically, for people walking around with a swastika on their back. I also think that sends the wrong signals, but we can't ban that. (AMA)

The comparison of the burka with the Nazi swastika, with its subtext of assumed extremism, is common and associated with threats of oppression and to personal safety and comfort. A distinction is seen here between the personal freedom to associate with any symbol and the professionalism expected from employees in the labour market. Within this distinction, it is the context of the sphere of the labour market which defines the degree of personal freedom, while professionalism can never be dispensed with or excused. This is exactly the importance of professionalism, as mentioned by AMA, that people of faith and no faith alike are able to distinguish in the common public institutions.

A young female left-wing Member of Parliament, referring to a dispute involving a childcare provider in Odense, stated that:

I feel that you could probably say that the child-minder in Odense was a good example of how you can fail at your job if the child can't see a facial expression and if the parents, when they come to take and drop off their child, can't see her expression, then I think it's alright that the Odense municipality goes in and sets some guidelines. (PVB)

We were faced with widely different perspectives, with some central leaders from the Muslim milieu not seeing any problems with any sort of religious clothing at work and also accepting a burqa for a woman who had small children in day care. The following quote from an interview with an elder imam, Danish by birth and one of the first Danish-speaking Muslim leaders in Copenhagen, is an example:

In my time as a headmaster, I've had a woman wearing a burqa hired in a kindergarten class. But then, I knew that when she came into the kindergarten, she would take the veil off and would tumble around with the children just like anybody else. She was a damn good teacher. (AWP)

Here the newly elected Lutheran bishop in Copenhagen steers more or less towards the middle. He does not want to strip religious women of their rights to wear religious clothing and he has no problem with the religious symbols, as long as it is possible to establish contact through recognition of each other's faces:

For myself, I'd say that if a person wears a cross, I wouldn't mind that at all. If a person comes up with a crescent, I wouldn't challenge that, or a headscarf for that matter. It's all right. However, I would say that we live in a culture where we see each other face to face and see each other eye to eye, so in that regard, something that completely covers the face would not be acceptable. But on the other hand, I wouldn't dream of banning it in society. On streets and roads. Well, I say if you want to cover yourself completely, that's OK, but I would like to say that I wouldn't hire a person like that. (PSJ)

The Lutheran bishop maintains that the ability to see the face is the key. As long as this minimum of visual sociability is there, anyone is allowed to wear a veil, a scarf or any other vestment.

The special case of the judge's appearance The situation regarding judges' dress was mentioned earlier. In 2009, the Civil Procedure Code was changed regarding judges' appearance in courts, and consequently, it is now directly forbidden for judges to wear religious (or political or other) symbols when on the bench in court (whereas they can wear a burqa, if they so wish, when biking to the court). Many of the interviewees return to discuss the symbolic use of the law. Although generally phrased, the law was understood to address female Muslim law students, who might wish to become judges (Danish judges are by majority now female), as well as Muslim lay judges wearing the scarf or even the burqa. Pragmatic voices have criticised the legislation for regulating a marginal or non-existing problem, but similar legislation has been passed in several European countries. For Muslims and others of a religious conviction, it is difficult not to see this as a disproportionate use of legislation.

One of our interviewees, SA, a trained lawyer who herself wears a Muslim headscarf and also sits as a lay judge, described how this law affected her as a lay judge of Muslim religion and how her religion helped her to deal with it:

I can't split it up like that because my belief in God is that God made everything and everything going around in the world, it comes from God, even for that matter if it's secular. But I can see how it clashes sometimes. . . . I remember when this terrible law came into effect against religious headwear. There you feel like there is a clash of religion with the secular system. There, you try to say as a Muslim, 'Can I affect this direction so there is a possibility that I can be both a Muslim and a judge, say in the city court?' So you try to unify it, you try to find a path to the solution. (SA)

She further explained her experience in court wearing a headscarf and told us how much she valued the support from colleagues:

Sometimes you get these looks . . . I had a hooligan in the other day; they look up at you but they're so focused on what's going on in the court that the novelty wears off within 2 minutes and then they have to focus on other things. It doesn't really affect my judgement in any way; I rule according to the rules I'm supposed to and that's the Danish legislation as it is at the time I'm judging. [. . .] Fortunately, I have a great deal of backing from the legal system because the judges themselves, the judiciary and the bar council and the Danish Lawyers and Economists Association and so on, they don't take that law seriously. (SA)

Almost all of the interviewees have reflections on the law on judges' appearance in court, but most of the deeper ones come from those who are legally trained. One of our interviewees is TB, a female judge at the Eastern High Court and chair of the Board of Equal Treatment. She reflected on the motivation for this legislation:

I honestly believe this proposal was adopted because people are scared of shari'a and that it may have an influence. But no matter what, it didn't end up with the entire jury system and the court system being invalidated. I can be a Muslim without wearing a headscarf. Nobody can see it on me. We have to judge on the basis of the laws passed in our society. [...] We don't become judges if we don't apply the Danish legal system and it is our duty to keep [the jury] in line. (TB)

The judge argues that only Danish secular law is used in court and that legislation concerning an individual judge's personal religion must be seen as irrelevant. The argumentation is in line with Article 70 of the Danish constitution, which was in part introduced to allow not only Christians but also Jews (as the only relevant minority religion at the time) to serve as judges.

The most significant reflection here is that the conflicts from their lives, from their religion or from other convictions that people bring into the courts will always be present. The value conflict and the personal differences are what make the institutions human and accessible, and the professionalism, which is an equally constituent part of the courts, is what makes the courts, judges and judgements accountable and consistent.

Religious holidays Another major area of conflict between individual religious convictions and the standardisation in the Danish secularised labour market, public or private, concerns the public calendar and questions of accommodation to religious celebration.

The Danish calendar is still based on Protestant Christian holidays, though with certain Danish peculiarities.¹⁸ Christmas, Easter and Pentecost (Whit Sunday), all three including the following Monday, are respected in public life, and all public institutions are closed on these holidays. Public peace must be kept on some of the most central holidays with no disturbance from music, football and so on.¹⁹ On Good Friday, the Danish flag flies at half mast the whole day.²⁰ On Christmas day and the other main holy days – unlike Sundays, however – all shops are closed²¹ and public transport has special routes and timetables. Other Christian holidays, the 5th of June which is the Constitution Day, and all Sundays are public holidays, in accordance with the law, also including a protection of the services of worship in the *folkekirke* (for more details see Christoffersen, 2012a).

That these days are holidays is mutually expected in the common agreements in the labour market. They are therefore, in principle, days off for all employees, meaning that anyone who has to work on these holidays is additionally compensated. Nonetheless, there is no right to argue on religious grounds that one does not wish to work on Sundays or on Christmas Day or other holy days. Everyone has to take his or her shift and Christian employees cannot use the argument of religious custom, such as going to Sunday service, to avoid it. Religious practices are not seen as a legitimate argument for extra days or even that particular day off. The same goes for minority religions, for instance Fridays for Muslims or Saturdays for Jews. But here, the public calendar does not include any of the

special holidays of these minority religions. This goes for the special Roman Catholic holidays as well as for the religious festivals of Islam and Judaism. Consequently, Catholics, Muslims and Jews as well as, for instance, Jehovah's Witnesses are given no special exceptions. In practice, most of the problems that arise in this area find solutions on a basis of practical and reasonable accommodation, either among the employees themselves or mediated by the employer. Even though the result often is that Muslims work on Christmas Eve and Christians on significant Muslim holidays, there is, however, no right for any of them to do so. This may work at times, but there is a rising concern that pragmatism on an individual basis might not be enough anymore.

As the imam from Copenhagen, AWP, suggested, there might be good reasons for changing the national holiday calendar. These reasons go beyond the strictly religious arguments:

I actually think it would be an advantage for the entire labour force if you were allowed to move your days off to a greater extent than is allowed today. I know for example in the transport sector, bus drivers and train conductors and all those, Muslims are really appreciated there because they don't mind working at Christmas while a lot of ordinary Danish non-Muslims would prefer not to work at Christmas. (AWP)

However, not all workplaces can see the advantage or reason in accommodating their employees' wishes not to work on holidays. Some individuals – such as SA among our interviewees – may have an option to 'just quit', but it hardly solves the systemic problem as seen from a minority perspective.

I believe you should let people make their own arrangements with their workplace. I've been lucky enough that when I've worked at a Muslim workplace, I get days off at the end of Ramadan. If my place of work doesn't want to be a Muslim workplace, then I would try to negotiate about it and if my employer wants to be angry or silly about it, like 'no, under no circumstances can you get a day off at the end of Ramadan, for the Muslim Christmas,' well then I would say, 'Thanks for the great work experience. I quit.' (SA)

Others rely on the support they can get from their faith community. The Chief Rabbi in Copenhagen, BL, explains that generally there is sufficient room to manoeuvre. The Jewish community has been part of Danish society for hundreds of years and their history testifies to the fact that much accommodation can be reached through negotiations. The Chief Rabbi reflects on the general sentiment regarding accommodation, which meets the most frequent difficulties, but observes that the problems that do arise are usually resolved benevolently and swiftly. His examples are related to students at school, but it was our impression during the interview that he had also sometimes contacted a workplace, if things became difficult. However, recently the Chief Rabbi has seen a tendency towards less lenience and a stricter adherence to common principles that are not attentive to minority religion.

Generally, it seems that lenience on a case-by-case basis is widely practised, but there is little support for the systematic application of a principle of accommodation regarding holidays. The humanist observer among our interviewees would argue

against an accommodative approach, if it is not conducive to the transaction of labour between the employee and the employer.

My personal advice to companies when I'm asked about this is that I think they should think things through when you do that kind of thing because otherwise you'll end up making people more ethnic than they actually are. You have to concentrate on the fact that co-workers are co-workers and then you have to see if you can't separate the private and the religious from your work. (DN)

This position might even be perceived as basically Lutheran in its distinction between the secular and the religious with its focus on the nature of the workplace as a place for work.

From a majority perspective, the Christian holidays in practice appear secular, but from a minority perspective, Easter, Christmas and all the Sundays of the year are hardly secular. When asking practising Christians, who actually celebrate the religious holidays reflected in the calendar, it seems they support the idea of a choice for religious people to have a day off on certain holidays, if Christians who want to follow their holy days also got the right to practise the rule. But accommodation only for minorities would hardly be accepted, even though the calendar in general gives much better possibilities for Christians. Equally, if the calendar no longer followed the Christian holy days, there would be serious objections among people in general. A political suggestion in 2012 to delete one of the special Danish Christian holy days caused uproar and was defeated.

Conflicts concerning religious organisations and their requirements on the labour market

In this part of the article, focus is changed from individual religious employees in the secular (private or public) labour market to a labour market where religious communities or organisations with a religious ethos are employing people (being themselves religious or (semi-)secular). The question is, to what extent it is possible to demand from employees the holding or practising of certain religious convictions or customs in this religious or semi-religious labour market.²²

There is no general legislation concerning religious communities and ethos organisations, and they are exempted from the Act on Charities (*fondsloven*). As for the religious staff in religious communities, and their hiring and firing, the only legislative boundary previously was a general law on white-collar staff.²³ If organisations based on a religious ethos, however, run services which in general are seen as public, such as schools, charities, welfare institutions and so on, then these institutions need to be approved by the state or municipalities as they are supervised under the relevant legislation. General labour law, such as law on equal treatment, is in force in regard to all employees, both in religious communities and ethos-based organisations. That is why the general labour market legislation has dealt with exemptions from general rules in regard to ritualised functions in churches and religious communities as well as in regard to job functions in organisations and institutions based on a religious ethos.

When it thus comes to ritualised dimensions of churches and religious communities outside the *folkekirken*, the historical path was a nearly 200-year-old understanding, which held that the state should not interfere in their general function and especially not in their employment of ministers and others according to their faith. But also when it comes to free schools, for instance, the general – pragmatic – understanding has been that organisations with an ethos can only sustain their normative identity if they can employ workers who are willing to commit to the identity on a daily basis. This has come to be understood rather narrowly, based on a distinction between what is seen as people's private lives and their commitment to their (religious or ethos-based) workplace.

This pragmatic approach has, however, increasingly conflicted with the general secularisation of the labour market, which requires employers not to consider the religion of their employees when hiring. Even though there has been a general tolerance towards religious communities and ethos-based organisations, the general understanding is also that they must follow the law of the land and that religion or religious requirements should not be pretext for discrimination on other grounds, such as sexuality, gender, physical handicap, change of family life and so on. The general tolerance towards religious requirements is thus rather narrow, taking its starting point in relation to special functions of those working within churches or religious communities as leaders, priests and other essential religious personnel.

Cases from the Board of Equal Treatment The Board of Equal Treatment has thus had a rather surprising number of cases within this field, showing that there is still uncertainty, or even lack of acceptance, towards the relevant norms.

The first case, *J. nr. 109/2010*, concerned a large diaconal organisation, DanChurch-Social (*Kirkens Korshær*),²⁴ which among other things runs institutions and services for the most poor people, for the homeless and for alcoholics, and is highly respected for its work, of which some is done on the basis of collected funds (among others through charity shops) and other work is done in collaboration with the municipality. The concrete institutions employ both salaried workers and voluntary workers, and some of the employed workers have as their job to support and supervise the volunteers. It is part of the foundational rules of the organisation that all paid employees must be members of the *folkekirke*. In this case, an employee was hired in a combined function as cleaner and assistant with direct contact with clients. He was, however, fired shortly after his hiring, since as a Muslim he could not function in the job of assistant. He filed a case in court, where the organisation agreed to pay him a compensation of Dkr60,000. They did not, however, agree on the causes for this compensation, so he tried to bring the case to the Board of Equal Treatment, who found the case was already settled in court. Thus, the board did not reach a substantive decision on the matter.

The next case, *J. nr. 56/2011*, concerned the same organisation. They had advertised a job for a chief consultant who would have a direct work relation with the leader of the entire organisation. One of the requirements was that the applicant should be a member of *folkekirken* and could work on the basis of Christian perspectives on life and humanity. These formulations, as well as the formulation in the foundational rules in the organisation (mentioned in case 109/2010), were disputed in a case at the Board of Equal Treatment. The board found that a general rule requiring that all employees be members

of *folkekirken* is in conflict with the law on equal treatment. It must be decided in each single case whether such a requirement is relevant and proportionate in regard to the job functions. The board added that for job functions without any element of preaching or diaconal work, such a requirement would be seen as illegitimate. In the concrete case, however, the requirement was relevant and proportionate related to the job function, and the board found the concrete advertisement legitimate.

Case *J. nr. 108/2011* concerned an advertisement for a job as a secretary in a small organisation, offering psychotherapeutic consultancies, and spiritual guidance and help on a Christian basis. It was required that the secretary be a personally convinced Christian and a member of a congregation. The organisation explained that prayer and services in which all employees are expected to take part is a daily practice. As the duties of secretary for the leader of the organisation included support of the organisation as such, including the leader and the board, the organisation found it crucial that the secretary could show not only understanding about, but also experience with, the Christian faith. The Board of Equal Treatment accepted – maybe somewhat surprisingly – that it could be seen as necessary and proportionate to require personal faith and membership of a congregation for this specific job as a secretary, due to the function not only in the job itself but also in this particular organisation.

Case *J.nr. 216/2012* also concerned the aforementioned organisation, the DanChurchSocial. A female social worker of Jewish faith filed a case before the Board because in an advertisement for five jobs as assistants in institutions for homeless people, the employer, among other things, required that the applicants should be members of *folkekirken* and be able to work on the basis of a Christian perspective on life and humanity. Relevant education and experience was also required. The argument was that the abilities to pray, listen to people from a Christian viewpoint and preach are central to the function as an assistant in an institution for the homeless, driven by economic reasons from the municipality – that membership of *folkekirken* can be seen as a relevant and proportionate requirement. It was also argued that the concerned job function was at the core of the tasks of the organisation and that in order for the organisation to operate in an ethically-based way, it was essential that employees dealing with these areas belonged to a Christian faith. The Board of Equal Treatment supported the argument and found the requirement legitimate.

The cases concerning the DanChurchSocial follow a strict interpretation of law and EU directives: religious organisations are not as such exempted from anti-discrimination requirements; they have to argue in regard to specific job functions whether or not belonging to a religion can be seen as relevant and proportionate, whereas the broader requirement that all employees should belong to the same faith is deemed out. Some of the religiously ethos-based organisations had publicly (in newspapers and at public meetings) stated that they thought the organisation as such, that is, all staff, could be exempted from the law as soon as they could prove that they as organisations were depending on an ethos loyalty from their employees. By this decision, it was made clear that an individual assessment related to each single (type of) job that was required.

Where to draw the line? All our interviewees agree with the general norm that it is necessary to formulate religious requirements for essential personnel within churches and religious communities as well as for faith-based organisations. The functions of the

essential religious personnel are the core of the religious labour market. A Catholic priest is required to follow Catholic norms, for example, with respect to gender and celibacy. Equally, all of our interviewees support the general idea that no religious requirements should be allowed in the secular labour market. For instance, the exclusion of a Muslim from certain jobs in the secular labour market is clearly seen as discriminatory and therefore illegal.

In the interview material, there is still, however, unease in the field concerning religious requirements of employees working in the semi-religious labour market for organisations with a religious ethos. These tensions are related to four different areas. First, which religious requirements concerning loyalty, behaviour and active support of core values are acceptable with regard to secular jobs within faith-based organisations, such as diaconal organisations? Is it acceptable to expect religious loyalty from the cleaner in the church? The other questions are versions of the same topic. Second, which normative requirements can a religious organisation, such as a private school or kindergarten, performing secular functions with the support of public means, demand from their employees in general? Is it acceptable to require the Catholic faith of a mathematics teacher in a Catholic school? Third, should clearly religious or ethos-based organisations require loyalty or active support from all employees? Or is there a limit to how far into their organisation and the functions of the organisation the religious allegiance can be demanded? And finally, which types of demands can be required? Loyalty towards the religious ethos is accepted by everyone. Not all would accept a requirement of personal faith, at least not in regard to more disparate job functions, since the faith is seen as a very personal matter, building on a (Lutheran?) distinction between faith and church membership. And, maybe even more central, which type of ethical lifestyle can, for instance, be required from a school teacher in a free school run on an evangelical basis? Could it be legally demanded that a divorced teacher or a teacher who gets an abortion can be dismissed?

These concerns are also central in the literature, where warnings against too strong a power on the side of collective freedom of religion at the expense of the individual employee, being faithful or not, are voiced (Dalberg-Larsen, 2011; Ketscher, 2007).

The argument of many religious organisations is, however, that they do not distinguish between the importance of various jobs and the need for a common commitment from everyone active in order to be sure of fulfilling their aims. Interestingly, this was also the general – and again very pragmatic – sentiment among our interviewees, even though some would still stick to the distinction between key functionaries and other non-essential functions – and even though many of them did not like the examples concerning ethical lifestyle.

We discussed these questions with nearly all the interviewees, beginning with BP, the chair of the organisation of social workers. We formulated a situation where one of her members applied for a job in a clearly religious diaconal organisation that was looking for a ‘committed Christian social worker’.

There can be no doubt that if it's been stated that the work is based on Christian values, then most Danes would know what that is [...] But I don't think it's all right to ask if you're a member of the *folkekirke* and then choose people based on that. [You're however allowed to ask] whether they can imagine themselves working under the values and norms they're presented with. That's obvious, and you'd do that pretty much everywhere. (BP)

This line of argument is shared among almost all our interviewees. It seems to be acceptable to declare the core values of the organisation and the employer and require that the employees are loyal towards this foundation. But it seems less legitimate to our interviewees to question an applicant about their personal faith. As has been seen, this distinction between formal loyalty and personal conviction does, however, more or less seem to be out of touch with, for example, the Board decision that requiring personal faith for a secretary was acceptable.

From free schools to religious schools? One of the central issues of the interviews was the question of religious discrimination in schools as faith-based workplaces.

A Jewish, Catholic or Muslim private school (the so-called 'free schools') naturally demands respect for the religious dimension and loyalty to the founding principles, and it seems there is a general or pragmatic respect for this fact. No clear-cut solutions are brought to the table. Reflections and interpretations are related to the concrete context and the concrete questions. Which type of organisation? How clear is it that there are core values related to the organisation? What is the actual nature of the job? How interlinked are value-based practices to the job? Is there a limit to loyalty?

When asked where to draw the line, KWH, a female theologian who is often heard in public debates, argues for liberty on behalf of the employer to freely manage, for instance, a Christian free school under the current legislation:

I think you should be allowed a certain degree of freedom when you're dealing with the law on free schools. Otherwise, you can just say, 'We don't want a law regulating free schools,' because you can't have your cake and eat it. If you want Christian free schools, then you can't prevent them from having an old-fashioned Christian view about certain things. So I think that would be strange, yes. (KWH)

Something similar can be argued for Catholic, Jewish or Muslim free schools. If they are allowed in the first place, it must be allowed on the premise of the religion. A Roman Catholic interviewee, ET, answered along the same lines. Not only can a religious organisation require a clear ethos, but it must be able to employ principals and teachers according to the religious ethos.

You'd expect some kind of loyalty. Like, the Catholic children coming to church on Sunday, if they don't see Mr Jensen at the Sunday mass but they do see Mr Jensen [e.g. a (head) teacher] standing outside and saying that they're wasting their time in church. There's an obligation to be loyal. (ET)

The question is, of course, to what extent religious requirements can be accepted as part of the employment criteria in private schools, before this results in a change of these schools from a general understanding of being free (i.e. from state regulation) to becoming religious (i.e. bound by other norms and laws, foreign to the general public). This question has been discussed intensively in regard to the rising number of both evangelical and Muslim free schools in Denmark. These schools require from their teachers that they are loyal towards the general basis of the school. But they also require their teachers

to accommodate to school standards for ethical lives of individuals. Such requirements are rare in the Danish labour market. So far, however, these requirements from religious schools are seen as acceptable in the general public.

Equal treatment and the special case of DanChurch Social. We did not know when we phrased our questions and identified the interviewees that one of them as head of DanChurchSocial actually had cases on these matters under review before the Board of Equal Treatment. The following exchange illustrates how the conflict arose. It is obvious how different expectations clash when considering the religious, the organisational, the national and the European aspects of this conflict.

Basically our regulations require that DanChurchSocial seek staff among members of the *folkekirke*, and what we're saying is: to seek is not the same as to find, so having found our employees, those that fit the criteria we seek, then there is an option for our board to grant a dispensation. [...] the fact is that we have a 'brand' that says we work 'on the basis of *folkekirken*' and that's why that is what you'd want to meet. It's very central for us, because we've just been brought before the Board of Equal Treatment and had a decision about a fortnight ago that we were in the wrong... (HC)

The argument from HC is that since DanChurchSocial does diaconal work, they must also be allowed to require active participation from their employees, and that is found through the very broad requirement of membership of *folkekirken* (80% of the membership being Danes).

The heart of the matter remains where to draw the line on the influence of personal faith on the function of the job, and there are no clear answers. As discussed above, the essential religious personnel must be required to adhere to the ethos and faith. Similarly, teachers at the religious free school must be loyal to principles when at work, but the question is whether it is also acceptable to require a certain lifestyle. DanChurchSocial, however, is not allowed in general to seek a member of the *folkekirke*, unless it is necessary and proportionate in regard to certain job functions; but it is allowed to dismiss someone who is not loyal to the principles of the organisation.

Religious discrimination and organisations with a religious ethos It is thus not so clear-cut when one is talking about 'religious loyalty' towards a faith-based organisation, or when one is facing other types of discrimination, based on religious grounds.

From the perspective of the employers and leaders, the reflections and arguments are the same. They want to be allowed to use all types of religious arguments as a basis for all types of distinctions and are generally not likely to accept that this should be prohibited. They see all employees as equally relevant and do not want to distinguish among the functions, and they are reluctant to define what follows from religious identity. The aforementioned leader from the pious Christian movement, HOB, argued:

Another example could be that we had an employee who got a divorce. Can that person still be an employee? To begin with, I'd say yes, but that depends on what the cause of the divorce is and how the person in question thinks about it and what they are going to do about it and so on. (HOB)

So the basis is that the religious leader himself wants to decide on the consequences of ethical concern, and he also wants to decide himself whether the religious ethos of the organisation should also allow for other types of discrimination based on religious arguments; that is, he wants to have discrimination based on a combination of, for instance, sexuality versus religious arguments accepted, as long as the prevailing argument is religious. He thus rejects the concept of *multiple discrimination*.

Of course you can end up in situations where we've had a job opened and somebody applies for the position and the person is qualified but there [...] would be a case where, for example, if it was about sexuality, that somebody would say that we won't hire that person because it goes against our core values. (HOB)

The situation that HOB sketches comes close to the case of the Christian psychotherapeutic organisation and maybe also to DanChurchSocial, but the inherent element of discrimination becomes much more explicit as his argument continues.

The word *discrimination* is such a strong word. If you end up saying nobody is discriminated against, then it might mean that it's almost an open floodgate for the individual to set the agenda for others. [...] I think that the balance must be that the organisation with a profile says, 'this is what we stand for and we hire people within this frame, and if you can fit in with that . . . , ' well then there have to be some pretty good reasons for us not . . . I mean there can be other qualified applicants but there shouldn't be any discrimination there. (HOB)

The remarkable thing about HOB's argument is that while it is clear that discrimination is illegal, he does not consider these issues to be discrimination. He advocates a pragmatic position where religious organisations should enjoy *reasonable accommodation* in terms of being allowed to decide themselves whether or not a practice towards ethical concerns (such as homosexuality) is discrimination. No cases of this type have been brought before the Board or the Courts, and given the pragmatic openness showed in, for example, the case on requiring prayers from a secretary, we cannot know what the result in such a case would be.

When conducting our interviews, we expected to have solid grounds when asking these questions to the director of the Institute of Human Rights. We expected him to support the view that religious organisations should not discriminate on grounds other than a narrowly interpreted religious identity related narrowly to ritualised job functions and job functions with a clear requirement of loyalty towards the religious ethos in the organisation. We were, however, surprised once again at the pragmatism in the answer given:

My basic position would be that atheist or religious organisations should be able to keep themselves together without getting Trojan horses within their ranks. If that means that in relation to other faith-based communities you allow them a broader scope, I can live with that. [...] I would say that if you're employed in a church or a Mormon community or a Jewish community, then there are rules to abide by there. Don't come and use the legal system to make nonsense because you want to be an organist there. That's just tough on you; you'll just have to play the organ someplace else.²⁵ That would be my position. [...] There can always be borderline cases but my position will always be that these organisations need to some degree to be able to have an employment ban; like this is what we want and this we

don't want in our midst. [...] Fundamentally, I believe that if you want to work in a religious organisation, then you have to live with the fact that you need to be religious. (JC)

The position is somehow drawing on old norms in the Danish society and also regaining new influence now, supporting a general, collective freedom of religion in regard to hiring policies that through the second part of the 20th century was understood as conflicting with general labour market standards as well as human rights. We see here a path dependency, changing from an obviously foreign secularised standard into a new recognition of the old claims from religious organisations. On the other hand, it is also clear that this trend has not yet been the general understanding, since had that been the case, then the DanChurchSocial would not have had problems with the Equality Board.

Conclusion

This article addresses the situation in the Danish labour market with regard to the individual religious cluster and the collective religious cluster, drawing on relevant case law and decisions of the Board of Equal Treatment as well as sociological data drawn from a series of interviews with Danish opinion makers.

Theoretically, the article assumes that a hidden structure of secularity and pragmatism has historically been the code behind the normative field, both in law and in practice. This pragmatic/secular approach has led to an understanding that personal faith is not relevant in the secular labour market, private or public. In the obviously religious labour market (e.g. religious communities), this pragmatic approach has led to an age-old understanding that the state should not interfere too much, but accept and establish exemptions related to job functions in regard to the ritualised dimension of the religious communities. Conflicts are, however, arising in a labour market which, from a Danish point of view, could be seen as combined secular-religious – that is, religiously-based ethos organisations or institutions, running institutions that are (partly) driven by public money and/or organise public welfare.

The cases show that there is no simple picture – not even in the secular labour market, where attempts at accommodation are conflicting with prohibition of reacting to the employee's private faith and where the employee's requirement of accommodation sometimes seems supported and sometimes an argument for not being hired or fired. It might be possible to argue that private employers have a larger margin than public which, on the other hand, also means that any idea of 'state values' is generally not supported (except in the courts). It is also clear that there is some sort of distinction between (members of) minority religions and majority religions – minority religions seem more protected. This becomes even clearer when analysing the cases on the labour market with religious communities or ethos organisations as employers. At least that seems to be the most relevant criteria for understanding the different treatment of the (huge) DanChurchAid and the (small and minority-based) psychotherapeutic clinic seeking a praying secretary.

Or maybe it simply is pragmatism and a new type of secularism which is again prevailing, namely, an 'anything goes' argument. In regard to the religious labour market, such a tendency could be seen as a reward to a prior pragmatic path in Danish labour market regulations combined with a certain sort of secularity, namely, a much clearer distinction between religious organisations and secular ones. In regard to the secular labour market,

the same approach could lead to questioning why it should be so necessary to follow religious rituals or practices, such as food requirements and religious clothing.

First, it has surprised us to realise that among our interviewees there is an increasingly higher acceptance of religious identity in practice on the labour market than the court cases 10 years ago showed. Some of the legal cases, however, are being decided on the basis of a more legalist and formalist understanding of what is acceptable, only signalling the margins of acceptable employer policies.

Second, the issue of prerogatives of religious employers has also entered the picture and presented a number of questions, some of which still remaining unanswered. If religious employers are able to demand further exemptions from the consideration of individual human rights under the guise of protection of collective religious freedom, this may lead to an increase in employer prerogatives and in the management rights of these employers. Such developments may end up limiting individual freedom of religion and belief.

There is thus a discrepancy between an emerging wider acceptance of requirements of religious loyalty and stricter legal limits to demands for loyalty (reflecting a more secular 'spirit' of labour law), and it seems to present a remaining area of conflict.

In employment there must be an accommodation that takes account of the reasonable demands of the various religious individuals, for example, in regard to days off, food requirements and decent clothing requirements. There is enough evidence from around Europe to indicate that this can be achieved and that it can improve labour relations. In such a context, it is necessary to ensure that a balance is maintained between the rights of the individual religious employee and the rights of the secular employer. A pragmatic approach is most relevant.

In an environment where the tendency is towards expanding employers' expectations of their employees' loyalties, it is at the same time important that pragmatism is not challenging the rights of the individual to an extent that they are impugned, also, and not least, when the employer is a religious organisation.

Appendix I

List of Danish interviewees

AMA, female, 27, elected Mayor of Integration and Employment in Copenhagen city council, representing the Social Liberal Party.

AWP, male, 57, converted Muslim and Imam in Nørrebro, a popular Muslim area of Copenhagen. Book seller, relief worker and free intellectual.

BL, male, 65, Rabbi in the Jewish community in Copenhagen since 1976, Chief Rabbi since 1996.

BP, female, 50, chair of the labour union for social workers in the municipalities, working among others with practical integration of migrants and questions of religion in this context.

CS, male, 60, high ranking civil servant in the European Union Commission.

DN, male, 36, independent intellectual. Contributes to media and functions as external university teacher. Member of and former press representative for the newly established Humanist Association.

ET, male, 79, central voice among Roman Catholics, including an Internet-based news radio programme. Retired Catholic school teacher.

HC, female, 54, recently appointed full-time national leader of Kirkens Korshær, DanChurchSocial.

HOB, male, 38, Free Church minister, related to the *folkekirke*, Chair of Inner Mission.

JC, male, around 40, director of the Danish Institute for Human Rights. Professor of Law.

KWH, female, 41, independent intellectual theologian, editor of Free Press Magazine 'Sappho.dk.' Vice-president of Free Press Society, writer and columnist.

LMH, female, 50, part-time minister in a Baptist church on Bornholm and part-time general secretary of the Baptist churches in Denmark, based in Copenhagen.

MB, female, 54, new Member of Parliament in the 2011 election for the newly founded Liberal Alliance Party. Vice-chair of the Parliamentary Committee for Church Affairs.

NB, male, 36, Pakistani hospital imam at the National Hospital in Copenhagen (Rigshospitalet). Coordinator for the ethnic resource team there and for three other Copenhagen-based hospitals.

PSJ, male, 52, elected Bishop of Copenhagen in the *folkekirke*.

PVB, female, 36, Member of Parliament for the Socialist People's Party, Spokeswoman for among others church affairs.

SA, female, 39, independent Muslim intellectual. Teaches Danish, History and Social Sciences at a Muslim private school.

TB, female, 56, High Court judge and chair of the administrative equality body and thus by profession a lawyer.

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Notes

1. The Christian Labour Organisation has however recently appointed an information officer whose task among others is to inform about the impact of the christian normative foundation. According to informations from him on 15th June 2013, such informations will soon be included on the homepage (3rd July 2013). See www.krifa.dk (accessed 18 April 2013).
2. Equal pay for equal work, LBK nr 899 af 5 September 2008; equal treatment of men and women in the labour market, LBK nr 645 af 8 June 2011; general equality between men and women, LBK nr 1095 af 19 September 2007; law on prohibition of discrimination on the labour market, LBK nr 1349 af 16 December 008, implementing directive 2000/78 as well

- as labour market dimensions of directive 2000/43; and law on ethnical equal treatment, LBK nr 438 af 16 May 2012, implementing dir 2000/43 for non-labour-market-dimensions.
3. Forskelsbehandlingsloven, lov om forbud mod forskelsbehandling på arbejdsmarkedet, LBK nr 1349 af 16 December 2008.
 4. See www.ligebehandlingsnaevnet.dk, English (attended 19 April 2013); the law on the Board of Equal Treatment has been revised a couple of times; see latest LBK nr 905 af 3 September 2012. See also www.non-discrimination.net/countries/denmark (accessed 19 April 2013).
 5. See www.menneskeret.dk (accessed 18 April 2013).
 6. Lov nr 161 af 12 April 1978 om ligebehandling af mænd og kvinder med hensyn til beskæftigelse Section 11; bekendtgørelse nr 350 af 10 juli 1978 [law on the equal treatment of men and women on the labour market], Section 13 on dispensation for the general requirement to equal treatment of men and women on the labour market in situations parallel to Section 6 in the law prohibiting general discrimination on the labour market.
 7. Lov nr 459 af 12 Juni 1996 om forbud mod forskelsbehandling [law on the prohibition of discrimination on the labour market].
 8. Betænkning nr 1422/2002.
 9. We conducted 20 interviews. After we finished the interviews and sent selected quotations to the interviewees for approval, two of the male interviewees decided to withdraw from the study.
 10. See www.religareproject.eu (accessed 18 April 2013). Material from the Danish sociolegal analysis has been published in length in Vinding and Christoffersen's (2012) *Danish Regulation of Religion. State of Affairs and Qualitative Reflections*. Faculty of Theology, University of Copenhagen; See http://www.teol.ku.dk/ceit/religare/Danish_Report_Final_2012.pdf. This article draws on material from the report as such and not only from the chapter on the labour market.
 11. The name of the public school and the Lutheran majority church is more or less the same in Danish: *folkeskole* and *folkekirke*. In this article, we have mostly just mentioned the Danish name for the church. Here we wanted to emphasize the traditional understanding: the peoples' school and the peoples' church, thus *popular*. Another English translation could have been *common*, that is, common school and common church; see Christoffersen, 2010, p. 145 f.
 12. The final decision on this was published from the side of Danish Supermarket on friday 30 May 2013, see <http://politiken.dk/tjek/forbrug/indkoeb/ECE1983712/kovending-dansk-supermarked-tillader-nu-medarbejdere-med-toerklader/> (accessed 3 July 2013).
 13. See www.domstol.dk (accessed 1 May 2013).
 14. Notat om adfærd og personlig fremtræden ved Danmarks Domstole, 22 April 2008, j.nr. 7199 2006 8.
 15. Sekretariatet for Arbejdsgruppen; Indenrigs- og Socialministeriet (januar 2010): *Afrapportering fra Arbejdsgruppen om Burka, Niqab og lignende beklædning*. See http://www.stm.dk/multimedia/Afrapportering_fra_Burka-arbejdsgruppen.pdf (accessed 23 April 2013) and the governmental note: *Burka og Niqab hører ikke hjemme i det danske samfund* see <http://www.stm.dk/multimedia/Regeringen.pdf> (accessed 23 April 2013).
 16. Lov nr 495 af 12 Juni 2009.
 17. Thus, in this respect, this Danish governmental paper was in line with the *Eweida* decision of the European Court of Human Rights; ECtHR, *Eweida and others v. the UK*, App. nrs. 48420/10, 59842/10, 51671/10 and 36516/10, 15 January 2013.
 18. The Calendar is still the same as established by royal decree during absolutism.
 19. Helligdagsloven, LBK nr 1023 af 24 oktober 2012.

20. Cirkulæreskrivelse om officielle flagdage, CIS nr 33 af 20 maj 2009.
21. Lov om detailsalg fra butikker m.v., Lov nr 606 af 24 juni 2005 (lukkeloven) with later changes. The most relevant recent change is that the ministry can now also allow for open shops on general holy days, such as Christmas day; see lov nr 321 af 3 April 2012.
22. Focus in this part of the article is on religious communities or ethos-based organisations outside *folkekirken*, unless otherwise directly stated.
23. Fondsloven (law on Charities), bekendtgørelse af lov om fonde og visse foreninger, lbk nr 938 af 20 September 2012, specifically in Section 1 (2), nr 3, exempts religious communities from the law. Funktionærloven (law on white collar staff), bekendtgørelse om retsforholdet mellem arbejdsgivere og funktionærer, LBK nr 81 af 3 februar 2009.
24. See www.danchurchsocial.dk (accessed 3 May 2013).
25. JC is here playing with the results in the ECtHR cases *Obst* and *Schüth* against Germany; ECtHR, *Obst v Germany*, application no. 425/03, 23 September 2010; *Schüth v. Germany*, application no. 1620/03, 23 September 2010.

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